



Branch Banking and Trust Co.

Payment Strategies

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November 7, 2005

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: FDIC Notice of Proposed Rulemaking -- Deposit Insurance Coverage; Stored Value Cards and Other Nontraditional Access Mechanisms, 12 C.F.R. Part 330, 70 Federal Register No. 151 ("Second Proposed Rule")

Dear Mr. Feldman:

Branch Banking and Trust Company and its affiliated banks and subsidiaries of BB&T Corporation (BB&T) appreciate the opportunity to comment on the FDIC's proposed regulation that would clarify the insurance coverage of funds subject to transfer or withdrawal through the use of prepaid cards and other nontraditional access mechanisms.

BB&T, with more than \$107 billion in assets, is the nation's ninth largest financial holding company and operates more than 1,400 financial centers in the Carolinas, Virginia, Maryland, West Virginia, Kentucky, Tennessee, Georgia, Florida, Alabama, Indiana and Washington, D.C.

SECOND PROPOSED RULE¹

The FDIC's Second Proposed Rule clarifies that funds at insured depository institutions accessed by prepaid cards constitute deposits under the Federal Deposit Insurance Act (FDI Act).

¹ The FDIC's first proposed rule regarding insurability of stored value cards, 69 FR 20558 (April 16, 2004) ("First Proposed Rule") would have amended 12 C.F.R. 330.16 to state that funds received from cardholders or others on behalf of cardholders in exchange for bank-issued stored value cards are deposits. In contrast, the Second Proposed Rule does not amend the definition of deposit, but assumes that funds received and held by an insured depository institution that can be accessed by nontraditional access mechanisms are deposits. The Second Proposed Rule merely clarifies how the ownership of such deposits is to be determined. The Second Proposed Rule would replace the First Proposed Rule.

Specifically, the proposed rule adds a new subsection to 12 C.F.R. Part 330.5, that extends the FDIC's existing rules regarding ownership of deposits to funds held or received by an insured depository institution that can be accessed by prepaid cards or other non-traditional access mechanisms, including cards, codes, computers, or other electronic means. The new subsection by implication recognizes that such funds are "deposits". In determining the owners of the "deposits" the FDIC proposes to apply its existing rules, as well as new special rules.² To the extent that funds underlying prepaid cards are not received or held by a bank, the FDIC insurance rules do not apply.

The new special rules will determine if the funds underlying non-traditional access mechanisms are insured to the party who places the funds in the bank, or to the person holding the access mechanisms. Funds placed at a bank by one party for withdrawal or transfer by the same party will be a deposit insurable to the party who placed the funds in the bank. Funds placed at a bank by one party for withdrawal or transfer by another party, are deposits insurable to the first party, unless (a) the account records reflect that the first party does not own the funds, and (b) the first party, the bank, or its agent maintains records reflecting the identities of the persons holding the access mechanisms and amounts payable to each.

The stated policy reasons for the proposed rule are: (a) to provide guidance to the public about insurance coverage of funds underlying non-traditional access mechanisms, and (b) to promote accuracy and consistency in reporting "deposits" for inclusion in an institution's assessment base. BB&T recognizes and appreciates the policy issues and concerns raised by the Second Proposed Rule, and the FDIC's careful attempt to apply the ownership rules to new financial products. However, we have objections to certain aspects of the proposed rule as explained in our comments below.

For purposes of this letter, we will refer to "prepaid cards", as this terminology is more frequently used in the industry.

COMMENTS

1. The FDIC should not adopt a rule that treats funds underlying prepaid cards as deposits merely because the funds are received or held by an insured depository institution.

The practical effect of the proposed rule would be that the proceeds of all prepaid cards sold or issued by a bank would be insured deposits. We believe this approach is flawed. Banks sell and make available to their customers a variety of products and services, the proceeds of which are not and should not be considered deposits. We do not believe that the funds should be considered insured deposits merely because they are sold by a bank.

² Determining the owner of a deposit is different than determining the existence of a deposit. Section 12(c) is applicable in determining the owner of a deposit, but it is inapplicable in determining the existence of a deposit. 70 F.R. 45577, FN 8.

Depository institutions should be free to design, in reliance on clear guidance from the FDIC, prepaid card programs that are either insured or uninsured, as consumer and market forces dictate. This approach recognizes the fact that deposit insurance imposes a cost on banks that other providers of prepaid cards do not incur. Banks must have the flexibility to offer products that are not insured as well as those that are. Banks will then be able to price the product offerings to reflect the product's cost to the bank and utility to the customer. If regulation makes it unprofitable for banks to sell prepaid cards, banks will be forced to cede this product to non-bank providers, such as commercial money transmitters, which would decrease competition and innovation, to the ultimate detriment of consumers. We do not believe that such a result will meet the FDIC's policy objectives of providing banking services to the "unbanked" population.

We believe that the existing FDIC rules for determining ownership of deposits are sufficient to determine ownership of funds underlying prepaid cards. However, if the FDIC does promulgate a rule specifically addressing prepaid cards, we urge the FDIC to not adopt a rule which characterizes such funds as deposits *carte blanche*. Rather, we suggest a rule containing the requirements that must be met if the bank chooses to treat such funds as insured deposits. This approach recognizes that prepaid cards are extremely versatile and that purchasers of prepaid cards have different motivations for purchasing them.

2. Any final rule should recognize a distinction between different types of prepaid cards.

If a final rule is issued, we believe that distinctions should be made between different types of prepaid cards based on the policy reasons for subjecting certain funds to deposit insurance, rather than a purely mechanical approach of whether a bank sold the card and whether there are records identifying the cardholders. A more fundamental question is whether or not the holder of a prepaid card is relying on the deposit insurance system to protect the funds.

There exists today a variety of stored value and prepaid card products: FDIC insurance is appropriate for some of them, and inappropriate for others. For example, most employees expect, and their employers require, that funds underlying a payroll card be FDIC insured. Conversely, a consumer buying a small dollar gift card is not likely to expect, or desire, insurance on these funds, and is more likely to treat the card as a cash equivalent. Therefore, while we are not in favor of any new rules governing prepaid cards at this time, if new rules are enacted, we believe it is imperative that they distinguish between different types of cards, and allow for banks to issue both insured and non-insured stored value products.

However, we recognize that, as a practical matter, the distinctions between types of cards are unclear today, and are likely to become even more blurred in the future. Technological developments, industry innovation and increased consumer acceptance have led to new product offerings and applications for these devices. The combinations of features and functionalities that can be available with any given type of card are virtually endless. For example, there exist today cards issued by retailers and marketed as gift cards that can be reloaded electronically with

additional funds from a variety of sources, including the transfer of the cardholder's salary directly from his or her employer. Conversely, there are employers who issue bonuses in the form of retailer gift cards, given directly to the employees.

We are not aware of any universally accepted definition of a "payroll card", and note that the FDIC's proposal did not include a definition. It is also likely that any definition based on the types of cards or the features and functionality of the cards that exist in today's marketplace is likely to become outmoded or obsolete in the near future.

Although we believe that it is important for any final rule to distinguish between different types of prepaid cards for deposit insurance purposes, we also recognize that the FDIC may wish to make a distinction between these products based on their legal structure instead of engaging in case-by-case determinations based on the uses of particular cards. In this regard, we believe that because prepaid cards are in a relatively early stage of development and that the terms of prepaid cards are almost exclusively established by agreements between the card issuers and the cardholders, the FDIC is in a position to establish legal criteria for distinguishing prepaid cards that function as insured deposits and prepaid cards that are not based on the terms of the card agreements.

Different legal distinctions may lead to similar results that further the purposes of federal deposit insurance while continuing to permit insured banks to compete with non-bank providers of payment services. We believe that the FDIC should work with industry to establish appropriate distinctions between prepaid cards that are treated as insured deposits and other prepaid cards that are not treated as insured deposits to ensure that the distinctions used are both meaningful and practical, as well as consistent with the definition of "deposit" in the FDIA and the purposes of federal deposit insurance.

3. Funds underlying bank-issued gift cards should not be considered insured deposits.

In connection with the insurability of funds underlying gift cards, the FDIC asks the following:

- A. Should gift cards be considered deposits if the bank or its agent does not maintain records as to identities of cardholders or other parties?

We do not believe the maintenance of records reflecting cardholder identities should be determinative of the insurability of gift cards. We believe that funds underlying bank-issued gift cards should not be insurable deposits because most gift cards are fundamentally different from traditional bank deposits, even though banks hold the proceeds of both. Gift cards serve as a more flexible substitute for traditional store gift certificates by providing broader transaction capabilities. In turn, gift card transaction capabilities generally are more limited than the capabilities of deposit accounts. For example, in terms of the parties to whom payment can be made, gift card payments generally cannot be made to individuals and cash withdrawals may not be available. Further, the recipients of gift cards frequently do not choose the financial

institution issuing the card, nor is the gift card purchased on the assumption that it is backed by the deposit insurance system. Similarly, gift cards are not viewed by either the purchasers or recipients as an investment or savings vehicle.

B. If funds accessed by gift cards are insurable, should a “de minimis” rule be adopted?

If the FDIC adopts a final rule resulting in gift cards being deemed insurable deposits, BB&T would support the concept of a “de minimis” rule exempting small balance cards, but we believe that the \$100 threshold used in the proposal as an example is unreasonably low. We urge the FDIC to consult further with industry representatives in establishing the parameters that would be used in establishing a de minimis rule.

4. Any final rule should not mandate that pass-through requirements be met for payroll cards or any other type of prepaid card.

In many respects, the market has already addressed the deposit insurance issue with respect to payroll cards. Many employers insist that financial institutions offering payroll cards have to provide holders with the deposit insurance coverage. Financial institutions meet this requirement by structuring the payroll card to provide for deposit insurance under existing deposit insurance rules. Further, the Proposed Rule attempts to apply the treatment of historical payment instruments, such as checks, to prepaid cards, even though the legal relationships established between banks and their customers by checks and prepaid cards are different. Furthermore, we do not believe that the fact that some states have labor laws which require deposit insurance for funds underlying payroll cards should be a factor in the FDIC’s rulemaking.

5. The Second Proposed Rule will affect applicability of other laws and regulations.

Although the FDIC takes the position that the proposal applies only to the Federal Deposit Insurance Act, we continue to believe that any rule that classifies funds underlying prepaid cards as “deposits” will likely trigger a host of other regulations governing “deposits”, such as the USA Patriot Act, Regulations D and E, and state escheatment laws. Even if deposit insurance coverage does not automatically trigger coverage under other regulations, such as Regulation E, the fact that the FDIC treats a particular type of prepaid card as a deposit will inevitably affect other regulators’ views as to the appropriate coverage of regulations that they administer. This result would subject banks to additional requirements and compliance costs that would place banks at a competitive disadvantage. As mentioned previously, we believe this outcome would stifle innovation and competition in this market and negatively impact consumers.

6. The disclosure of the insured status of prepaid cards should not be mandated.

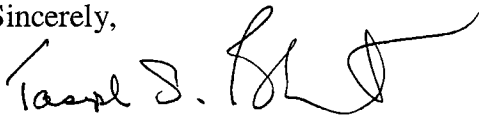
We note that current FDIC rules do not require disclosures of insured status for paper based instruments either on the face of or accompanying the issuance of payment instruments. For

example, cashier's checks issued at a financial institution are not required to include disclosure of FDIC "pass-through" coverage when such coverage exists. However, we understand that if certain types of prepaid cards are considered insured deposits, but others are not, the FDIC might want some notice to provide clarity to the cardholders. If a final rule contains such a requirement, we urge the FDIC to make the disclosure requirement short and simple and allow banks to determine where to place the disclosure. Any final rule should not mandate that disclosures be placed on the prepaid card.

In summary, we believe that the Second Proposed Rule, as currently written, would unnecessarily hamper the evolving development of innovative financial products that banks provide or make available for the benefit and convenience of consumers. As consumer and market forces demonstrate a demand for FDIC insurance coverage for funds underlying certain categories of prepaid cards, then card issuers will naturally begin to structure their products to ensure "pass-through" coverage to the card holder, and will gain a competitive advantage over other similar cards that do not provide this coverage. Conversely, in other situations, banks should not be forced by regulations to provide, or incur the additional costs associated with, insurance coverage that is neither expected or desired by consumers, such as for cards purchased as gifts.

Thank you for the opportunity to comment on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph S. Blount", with a stylized flourish at the end.

Joseph S. Blount,
Vice President
Payment Strategies